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SUPREME COURT OF THE UNITED STATES.

No. ~~151~~. *24*.

GEORGE W. WATTERSTON, PLAINTIFF IN ERROR,

vs.

EDWARD NOBLE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EAST-
ERN DISTRICT OF LOUISIANA.

G. S. GIDEON, Printer, No. 511 Ninth street, Washington, D. C.

proposed appeal
affirmed with leave to amend
denied



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1877

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UNITED STATES OF AMERICA,
Eastern District of the State of Louisiana.

EDWARD NOBLE
 vs.
 GEORGE W. WATTERSTON. } No. 2,912.

Pleas and proceedings before the hon. the circuit court of the United States in and for the fifth judicial circuit and district aforesaid, held at the city of New Orleans, on the ninth of June, 1858, being the April term, A. D. 1858, of the said court.

Be it remembered, that heretofore, to wit, on the second day of April, A. D. 1858, came Edward Noble, by his attorneys, S. B. Noble and Ogden & Stansbury, esq's, into the clerk's office of the said court, and filed a petition, which is in words and figures as follows:

Petition.

To the honorable the Judges of the Circuit Court of the United States for the eastern district of the State of Louisiana:

The petition of Edward Noble, who is a citizen of the State of South Carolina, with respect represents, that George W. Watterston, who is a citizen of the State of Louisiana, residing in the parish of Livingston, is indebted unto your petitioner in the sum of three thousand seven hundred eighteen dollars and sixty-five cents, with interest thereon at the rate of eight per cent. per annum, from the 9th day of March, 1855, for this: that your petitioner is the holder and owner of the promissory note marked A, annexed to and made a part of this petition, made by said Watterston to his own order, for the sum above set out, dated at New Orleans, May 3d, 1856, and payable eight months after date, with interest as above stated. Petitioner shows, that on the 14th day of April, 1857, the said Watterston executed a mortgage before P. J. Starns, the recorder of the parish of Livingston, in order to secure the payment of the said note, upon the following property, to wit: Section 38 in township No. 7 south, of range No. 4 east, containing six hundred and forty-five $\frac{3.8}{100}$ acres; section 37 in same township and range, containing eight hundred and fifty-eight $\frac{7.2}{100}$ acres; and section 41 in township No. 6 south, of range 5 east, containing six hundred and thirty-eight $\frac{7.0}{100}$ acres; all which lands are situated in the parish of Livingston aforesaid, as will more fully appear from a duly certified copy of the act of mortgage annexed to this petition, and made a part of the same.

Wherefore, as the said George W. Watterston refuses to pay
 [REC. CLI, D. T., 1859.]—1

said note after amicable demand, your petitioner prays that he may be cited, that after due proceedings, there be judgment against him for the claim above set out, principal and interest, with mortgage upon the property hereinbefore described as mortgaged, and for all such other relief as equity may require.

S. B. NOBLE and
A. H. OGDEN & STANSBURY,
Att'ys for Petitioners.

A.—Note filed with Petition.

\$3,718 65.

NEW ORLEANS, *May 3d*, 1856.

Eight months after date I promise to pay to the order of myself thirty-seven hundred and eighteen $\frac{65}{100}$ dollars, with interest from March 9th, 1855, at eight per cent. per annum until paid, for value rec'd, payable at the office of Watt, Noble & Mobley, New Orleans, La.

G. W. WATTERSTON.

Endorsed: G. W. WATTERSTON.

Ne varietur. April 14th, 1857.

P. J. STARNS, *Recorder.*

Act of Mortgage, Filed with Petition.

STATE OF LOUISIANA,

Parish of Livingston.

Be it remembered, that on this fourteenth day of April, in the year of our Lord one thousand eight hundred and fifty-seven, before me, the undersigned, recorder of the parish of Livingston, in the State of Louisiana, personally appeared George W. Watterston, of said parish, who did declare that, acknowledging an indebtedness to Edward Noble, of the State of South Carolina, in the sum of three thousand seven hundred and eighteen $\frac{65}{100}$ dollars, with interest thereon, at the rate of eight per cent. per annum, from March 9th, 1855, according to the tenor of the within obligation to me exhibited, and by me duly paraphed of even date with this act, he, the said Watterston, does by these presents mortgage and hypothecate to said Noble, his heirs, executors, administrators and assigns, the following described lands in the parish of Livingston, viz: section thirty-eight, in township No. 7 south, of range No. four east, containing six hundred and forty-five $\frac{38}{100}$ acres; section thirty-seven, in same township and range, containing eight hundred and fifty-eight $\frac{72}{100}$ acres; and section forty-one, in township No. six south, of range five east, containing six hundred and thirty-eight $\frac{70}{100}$ acres.

Now this hypothecation is made upon the following terms and conditions, to wit:

1st, it does not import confession of judgment or authorize ex-

ecution process; 2d, it shall not avail the mortgagee before the first day of April, 1858, when, if not extinguished, the said Noble may avail himself of his rights under it; and, 3d, if the aforesaid debt be not satisfied at the aforesaid time, viz: April 1, 1858, the said Watterston agrees to confess judgment for the amount thereof.

Thus done and signed in my presence, and in that of Asa W. Kinchen and Simpson Kemp, lawful witnesses, the day after date within written.

(Signed by)

G. W. WATTERSTON,
EDWARD NOBLE,

By agent, S. B. NOBLE.

ASA W. KINCHEN,
SIMPSON KEMP.

P. J. STARNES,
Recorder.

A true copy of the original, this April 14th, A. D. 1857.

P. J. STARNES,
Recorder.

Exception.—Filed 19th April, 1858.

U. S. Circuit Court.

EDWARD NOBLE	}	2,912.
vs.		
G. W. WATTERSTON.		

Now comes defendant, and to the petition served on him in this case excepts, and says that this court has no jurisdiction over the matters involved in this controversy, the contract sued on being a promissory note, made in the State of Louisiana by a citizen of this State, for the benefit of, and given to, citizens of this State, and that the assignment of said note by Watt, Noble & Mobley, of this State, to Edward Noble, a citizen of the State of South Carolina, cannot give jurisdiction to this court.

2d. That this suit is brought on the promissory note in question, and that judgment with mortgage is claimed on certain property in the parish of Livingston, mortgaged long subsequent to the making the original note forming the basis of the present suit, and that this court, though it might have jurisdiction over the latter contract, has certainly none over the first.

3d. That this court can have no jurisdiction in this transaction, inasmuch as it cannot at the same time render judgment on the note sued on via ordinaria, and with mortgage, as prayed for, under the circumstances of this case.

Wherefore defendant pleads the above exceptions, and prays that the suit be dismissed with costs.

WHITAKER & FELLOWS,
Of Counsel.

Answer.—Filed 19th April, 1858.

U. S. Circuit Court.

EDWARD NOBLE
vs.
G. W. WATTERSTON. } 2,912.

And now comes defendant, and in case the exceptions filed in this suit be overruled, but not otherwise, he pleads to the claim filed a general denial, and asks for a trial by jury.

He further prays for costs and general relief.

WHITAKER & FELLOWS, *of Counsel.*

November Term, A. D. 1857.

New Orleans, Saturday, 24th April, 1858.

Court met pursuant to adjournment:

Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

EDWARD NOBLE
vs.
GEO. W. WATTERSTON. } 2,912.—Order overruling exceptions.

The exception herein filed by defendant came on to be heard, and was argued by counsel, and submitted to the court; whereupon, on consideration whereof, it was ordered that the same be overruled.

April Term, A. D. 1858.

New Orleans, Monday, 3d May, A. D. 1858.

Court met pursuant to adjournment:

Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

EDWARD NOBLE
vs.
GEO. W. WATTERSTON. } 2,912.—Order transferring cause to jury docket.

It appearing to the court that this case was inadvertently fixed for trial, the same being a jury cause, it was ordered that it be transferred to the jury docket.

April Term, A. D. 1858.

New Orleans, Wednesday, 9th June, 1858.

Court met pursuant to adjournment:

Present, Hon. J. A. Campbell, presiding judge; present, Hon. Theo. H. McCaleb, district judge.

EDWARD NOBLE
vs.
GEO. W. WATTERSTON. } 2,912.—Submission and Verdict.

This cause was called for trial, defendant's counsel absent. The